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COMMITTEE AGAINST TORTURE

Eighteenth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 294th MEETING

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Held at the Palais des Nations, Geneva,
on Tuesday, 6 May 1997, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.294.

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The public part of the meeting was called to order at 3.35 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 3) (continued)

Third periodic report of Sweden (CAT/C/34/Add.1) (continued)

1. Mr. SORENSEN (Country Rapporteur) read out the Committee's conclusions and recommendations on the third periodic report of Sweden (CAT/C/34/Add.34):

"Conclusions and recommendations of the Committee against Torture

SWEDEN

1. The Committee considered the third periodic report of Sweden (CAT/C/34/Add.4) at its 291st, 292nd and 294th meetings on 5 and 6 May 1997 (CAT/C/SR.291, 292 and 294) and formulated the following conclusions and recommendations.

A. Introduction

2. The third periodic report of Sweden was submitted on 9 August 1996, in accordance with the reporting schedule under the Convention. It conformed fully to the requirements laid down in the reporting guidelines. In addition, the Swedish representatives drew the Committee's attention to relevant developments, that had occurred in the State party since the completion of the report. The Committee and the Swedish representatives engaged in a frank and open discussion of the report.

B. Positive aspects

3. The Committee took note with satisfaction of the revised law relating to refugees as well as the way in which the Swedish Government now offers protection to many displaced persons who would not technically be identified as refugees under the Refugee Convention.

4. The Committee is also pleased to acknowledge the way in which Sweden provides material and political support for the rehabilitation of the victims of torture - both within the country and internationally.

C. Factors and difficulties impeding the application of the provisions of the Convention

5. Because Sweden adopts a dualist theory of incorporation of international treaty norms into its domestic law, the provisions of the Convention against Torture require enabling legislation before they become part of Sweden's domestic law. The continued failure of Sweden to do this renders the full implementation of the Convention's terms more difficult.

D. Subjects of concern

6. The continued failure of the Swedish Government to incorporate the Convention against Torture's definition of torture, in accordance with the Convention's article 1, into its domestic law.

7. The use of 'restrictions', some leading to solitary confinement for a prolonged period of time, for persons held in pre-trial detention centres and prisons.

8. The Committee is concerned that it received information on isolated cases of ill-treatment by the police.

9. The Committee expressed concern with regard to certain methods used by Swedish police in dealing with detainees or with public demonstrations, such as, in the latter case, crowd control with the use of dogs.

E. Recommendations

10. The Committee recommends that the State party should proceed to incorporate the provisions of the Convention against Torture in Swedish law, as it has already done with regard to the European Convention on Human Rights.

11. The Committee specifically renews its recommendation made during the consideration of the previous reports of the State party that Sweden should incorporate into its domestic legislation the definition of torture as contained in article 1 of the Convention.

12. While the Committee welcomes the information that the question of restrictions, including solitary confinement during pre-trial detention, is under review by the Swedish authorities, the Committee recommends the abolition of the institution of solitary confinement, particularly during the period of pre-trial detention, including, inter alia, when the security or the well-being of persons is in danger, in accordance with the law and under judicial control.

13. The Committee recommends that the State party should reconsider the methods used by the police with regard to crowd control."

Initial report of Namibia (CAT/C/28/Add.2) (continued)

2. At the invitation of the Chairman, Mr. Nujoma, Mr. Tjivikua and Mr. Makando (Namibia) resumed places at the Committee table.

3. Mr. NUJOMA (Namibia), replying to questions raised by the Committee at its 293rd meeting, said that his country's report (CAT/C/28/Add.2) was a State party report, not a report on the activities of the South West Africa People's Organization (SWAPO) during the struggle for liberation or as a liberation movement because a report of that kind was clearly not within his country's mandate. The issue of detainees had been investigated by the International Committee for the Red Cross (ICRC) and a report on it was available.

4. The words "common law of Namibia" referred to the jurisprudence of both Roman Dutch law in regard to substantive law and English common law. As to the laws of evidence and the Criminal Procedure Act, the latter criminalized acts of torture, if proven. Namibia did not yet have a criminal penal code. The words "justiciable bill of rights" referred to the Constitution, which was Namibia's supreme law and to which national and municipal law were subordinate. The Constitution provided that the Supreme Court was empowered to declare any legislation in conflict with it to be invalid or unconstitutional.

5. In relation to arbitrary arrest and solitary confinement, he referred to article 11, paragraph 1, of the Constitution, according to which "No person shall be subject to arbitrary arrest or detention. Persons arrested should be brought to court within 48 hours and should be informed of the grounds of the arrest in the language they understand. Persons arrested are entitled to legal representation. All indigent persons are entitled to legal aid and legal counsel of their choice". Despite its limited resources, the State had a special budget item for legal aid. Section 300 of the Criminal Procedure Code provided for the compensation of victims in criminal cases. The Criminal Procedure Act stated that the accused was entitled to remain silent from the moment of his arrest and during the trial.

6. The Ombudsman had the power to investigate all cases and could make recommendations to Parliament, the Attorney-General or the Prosecutor-General, who decided whether or not to prosecute.

7. His Government denied reports of shooting at civilians as devoid of all truth. It should, however, be pointed out that the duties of the Namibian Defence Force were clearly spelled out in article 118 of the Constitution and the Defence Act and were, inter alia, to defend the territorial integrity of Namibia and its national interest in line with internationally accepted rules. The Government did not and would not shoot at civilians because it did not consider them to be military objects. The Defence Forces received training in international humanitarian law and the laws of armed conflict and were assisted by the ICRC in that regard. Many workshops had been conducted and attended by defence commanders.

8. Namibia did not have a definition of torture. Torture was, however, taken to mean the application of force on a person in an attempt to extract information. Cases of assault should not be associated with torture, as reported by so-called credible NGOs. Government investigations had found the contents of such reports to be false and clearly in conflict with its own records.

9. With regard to the Prison Act of 1959, a bill was currently in the final drafting stages and would soon be submitted to Parliament. It contained adequate built-in mechanisms for the protection of prisoners. Confessions were made under the terms of the Criminal Procedure Act of 1977 and before a magistrate, not a police officer.

10. Regarding pre-trial and lengthy detention, although Namibia had limited financial and human resources, it did its utmost to bring arrested persons before a magistrate within 48 hours, as stipulated in the Constitution, despite the fact that the vastness of the country and the limited means of transport caused many problems.

11. The Legal Assistance Centre was an independent NGO which had existed prior to independence. It had assisted many victims of torture by ensuring their defence. It was credible and it had brought cases to court.

12. Mr. CAMARA said that he had not received answers to his questions on what the penalties for torture were, what the status of bodies responsible for prosecuting violations of criminal law was and whether the Prosecutor's Office was independent of the police and other authorities. No answer had been given to his question on the disciplinary and criminal proceedings mentioned in paragraph 7 of the report. He had also asked for information on discriminatory treatment of lower-ranking officers in disciplinary and criminal proceedings.

13. Mr. NUJOMA (Namibia) said that his country had an independent judiciary. The award of damages for compensation was decided on by the court. There was a clear separation of powers and the Executive could not influence judicial decisions. The Police Court deliberated in disciplinary proceedings where superior officers had committed a breach, such as assaulting a suspect. Proceedings were normally instituted against the offending officer. The Police Code provided for adequate measures to protect those whose rights had been violated, as well as for measures to be taken against all offenders. Those investigating allegations of breaches came from a different region than that in which the alleged act had been committed.

14. Mr. PIKIS said that, according to the report, acts of torture were punishable under common law, but he wished to know what the exact form of punishment was. He also requested clarification of the statement that torture was a civil wrong - a tort. Was there a civil wrong of torture and how was it defined?

15. Mr. MAKANDO (Namibia) said that, as common law was unwritten, penalties under common law were at the discretion of the court and the amount of the award was determined in proportion to the extent to which the victim had provided proof of the injury. A civil wrong could give rise to a civil trial.

16. Mr. PIKIS asked whether criminal penalties under common law were prescribed in a code or were meted out at the discretion of the court.

17. Mr. MAKANDO (Namibia) said that, as his country had neither a criminal code nor a penal code, discretion lay with the court.

18. The CHAIRMAN said he presumed that it was therefore the judge who determined the penalty.

19. Mr. ZUPANCIC (Country Rapporteur) said that the questions he had raised about specific alleged cases of torture had not been answered. He wished to know whether victims of torture had the right to institute criminal

proceedings against the perpetrator in cases where the State authorities would not do so and whether the dependants of deceased victims of torture could institute civil proceedings for damages.

20. Mr. NUJOMA (Namibia) said that his delegation was unable to comment on the alleged cases of torture that had been mentioned as there was no record of some of them. Those that had been recorded had been looked into and appropriate action had been taken. With regard to criminal proceedings, a victim of torture could report his allegations to the police. An investigation would then be conducted and, on the basis of the evidence, the Prosecutor-General would decide whether or not there were grounds for prosecution.

21. Dependants of a person who had died as a result of torture could file a civil claim for damages.

22. Mr. MAKANDO (Namibia) said that, if a case of torture had been reported and duly investigated, but the Prosecutor-General had not considered the case to be admissible or had issued a nolle prosequi certificate, the victim could take private action.

The public part of the meeting was suspended at 4 p.m. and resumed at 5.20 p.m.

23. Mr. ZUPANCIC (Country Rapporteur) read out the Committee's conclusions and recommendations on the initial report of Namibia:

"Conclusions and recommendations of the Committee against Torture

NAMIBIA

The Committee considered the initial report of Namibia (CAT/C/28/Add.2) at its 293rd and 294th meetings, on 6 May 1997 (CAT/C/SR.293 and 294/Add.1) and adopted the following conclusions and recommendations:

A. Introduction

The Committee thanks the State party for submitting the initial report. The Committee also thanks the State party for its responses to the questions and concerns expressed by the Committee.

B. Positive aspects

1. The Committee welcomes the goodwill shown in the accession of Namibia to the Convention against Torture as well as to other instruments of international human rights and humanitarian law.

2. The Committee welcomes the Government's growing awareness of the importance of human rights. This can be discerned in the fact that the Government now permits non-governmental organizations and diplomatic officers regular access to prisons and prisoners and in that local non-governmental organizations operate freely, dealing openly with a variety of human rights issues.

3. The Committee expresses its satisfaction with the explicit proclamation in the Namibian Constitution to the effect that no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and, furthermore, that testimony obtained under torture is not admissible as evidence in a Namibian court of law.

4. The Committee greets the perceptible improvement in the field of Namibia's asylum and refugee policy according to which asylum-seekers from other African countries are permitted to enter the country and are granted refugee status.

C. Factors and difficulties impeding the application of the provisions of the Convention

1. The Committee is aware that the Republic of Namibia, which only became an independent State in 1990, is confronted with the legacy of the pre-independence period which hinders desirable efforts to fully harmonize the Namibian legal order with the requirements of international humanitarian law instruments.

2. The Committee has tried to take this fact into consideration in formulating its conclusions and recommendations. However, it must be emphasized that no exceptional circumstances can ever provide a justification for failure to comply with certain terms of the Convention against Torture.

D. Subjects of concern

1. The Committee is concerned that Namibia has not integrated, as required by articles 2, paragraph 1, and 4, paragraph 1, of the Convention, the specific definition of the crime of torture into its penal legislation in terms legally consistent with the definition contained in article 1 of the Convention against Torture. In the absence of a strict legal definition of torture and other offences and in the absence of a precise description of appropriate and corresponding punishment for torture and other offences, it is impossible for the Namibian courts to adhere to the principle of legality (nullum crimen, nulla poena sine lege previa) and to article 4 of the Convention.

2. The Committee is also concerned at the alleged cases of torture referred to specifically during the discussion of the State party's report.

3. The Committee deeply regrets that, in many cases, due to the lack of judicial personnel, pre-trial detention extends for up to one year.

4. The Committee is concerned that, although torture and physical assaults by the Namibian police have been reduced considerably since independence, treatment which falls under the notion of torture, cruel, inhuman or degrading treatment or punishment still occurs in certain areas of the country.

5. The Committee is also concerned about the State party's failure in many cases to promptly and impartially investigate and to prosecute those responsible for past and present acts of torture or cruel, inhuman or degrading treatment. Namibia furthermore fails to consistently institute disciplinary proceedings against public officials responsible for acts of torture or ill-treatment.

6. The Committee expresses concern about the fact that there are no legal instruments to deal specifically with compensating victims of torture or other ill-treatment. The existing procedures for obtaining redress, compensation and rehabilitation seem to be inadequate and in many cases ineffective. Moreover, they limit the right to redress and compensation to the victim of torture, failing to give, in accordance with article 14, paragraph 1, of the Convention, the same standing to the deceased victim's dependants.

E. Recommendations

1. Namibia should enact a law defining the crime of torture in terms of article 1 of the Convention and it should legally integrate this definition into the Namibian substantive and procedural criminal law system, taking especially into account:

(a) The need to define the offence of torture as a specific offence committed by or at the instigation of or with the consent of a public official (delictum proprium);

(b) Any special intent to extract a confession or other information, to arbitrarily punish, to intimidate, to coerce or to discriminate;

(c) The need to legislate for complicity in torture and attempts to commit torture as equally punishable;

(d) The need to exclude the legal applicability of any justification for cases of torture;

(e) The need procedurally to exclude all evidence obtained by the use of torture in criminal and all other proceedings, except in proceedings against the perpetrator of torture himself; and

(f) The need to legislate for and to enforce the prompt and impartial investigation of any substantiated allegations of torture.

2. Namibia should enact laws, particularly prohibiting torture, as required under the Convention against Torture and other human rights agreements binding on Namibia, in fields that are not yet regulated. Existing national laws should be further reviewed in the light of the Convention and protection of human rights in general.

3. The education of members of the Police Department, the National Defence Force, the Prison Service, other law enforcement personnel and medical officers regarding the prohibition of torture and other cruel, inhuman and degrading treatment should be fully included in their training, in accordance with article 10 of the Convention, with special emphasis on the definition of torture as contained in article 1 of the Convention and also emphasizing the criminal liability of those who commit acts of torture.

4. Independent governmental bodies consisting of persons of high moral standing should be appointed to take over the inspection of detention centres and places of imprisonment. The Government should also establish an independent police complaints authority dealing with complaints against members of the Police Department.

5. The Namibian Government should introduce measures to reduce the accumulation of criminal cases resulting in long and illegal pre-trial detention, violating thereby the right of the defendants to be tried within a reasonable time.

6. The Government should furthermore provide the Namibian Office of the Ombudsman with the personnel and the financial means it requires to start exercising its functions in the field of the protection of human rights as foreseen by the Namibian Constitution.

7. The Committee recommends that the specific allegations of ill-treatment which have been brought to the Committee's attention should be duly investigated and that the results of such investigations should be transmitted to the Committee. The Committee likewise recommends that the cases of the disappearance of former SWAPO members should, according to article 12 of the Convention, be promptly and impartially investigated. In all situations where reasonable grounds exist to believe that these disappearances amounted either to torture or to other forms of cruel, inhuman or degrading treatment, the dependants of the deceased victims should, according to article 14 of the Convention, be afforded fair and adequate compensation. The perpetrators of these acts should be brought to justice.

8. Traditional leaders in community courts in Namibia should either be effectively made to comply with the legal limits of their power to order the pre-trial detainment of suspects or they should be stripped of their power to order such pre-trial detention.

9. The Namibian authorities should institute proper procedures in order to comply with article 3 of the Convention, i.e. to enable refugees to apply for residence in cases where substantial grounds exist for believing that such refugees would be in danger of being subjected to torture if expelled, returned or extradited to another country.

10. The Committee recommends the prompt abolition of corporal punishment inasmuch as it is legally still possible under the Prisons Act of 1959 and under the Criminal Procedure Act of 1977.

11. The Committee recommends that victims of torture in Namibia should be given standing to institute, apart from civil action for damages, criminal procedures against the perpetrators of torture.

12. In view of the normal separation of disciplinary proceedings from criminal procedure, the Committee considers the legal dependence in Namibia of disciplinary proceedings against the perpetrator of torture upon the outcome of criminal proceedings as unnecessary."

24. Mr. NUJOMA (Namibia) said that his delegation strongly objected to the Committee's recommendation concerning the missing detainees. His Government took the view that the investigation of liberation movements did not lie within the mandate of the Inter-Ministerial Commission of Human Rights or the Ministry of Justice. The issue had been dealt with by the International Committee of the Red Cross, whose findings had been made public. Namibia would therefore not consider itself bound by the Committee's recommendation on the matter.

25. The CHAIRMAN thanked the delegation of Namibia for its cooperation with the Committee.

The public part of the meeting rose at 5.35 p.m.